

Applicant : Jim Azzar
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REMARKS

This is in response to the Advisory Action mailed November 29, 2006. The Advisory Action stated the Applicant's Response filed September 6, 2006 did not place the application in condition for allowance because the Examiner considers that the proposed amendments raised new issues that would require further consideration and/or search. The Advisory Action did not enter the proposed amendments. A Request for Continued Examination (RCE) is included herewith, which allows for entry of the amendments herein as a matter of right. A petition and fee for extension of time (37 C.F.R. 1.136[a]) is also included herewith. Additionally, a separate Transmittal of Corrected Formal Drawings has been submitted.

In light of the amendments and following remarks, Applicant respectfully requests reconsideration of the present application. The amendments and remarks presented herein are fully supported by the application as originally filed. No new matter has been entered.

STATUS OF THE CLAIMS:

Claims 1, 2, 4, and 6-21 are pending in the application. Claims 3, 5, and 22-25 have been previously cancelled.

CLAIM REJECTIONS UNDER 35 U.S.C. 102:

The Examiner rejects Claims 1, 2, 4, 6, 7, 11-16, and 18-20 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,781,374 to Walker.

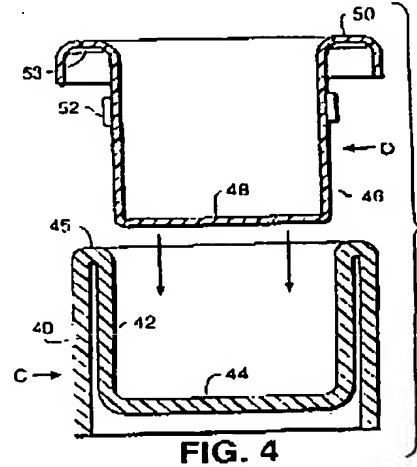
Applicant respectfully traverses. Initially, Applicant notes that none of the Claims 1, 2, 4, 6, 7, 11-16, and 18-20 recite an "intended use". A recitation of intended use appears in the form of "use for . . .". In this case, an intended use would appear in the form "a tray for use as a human food tray" or "a tray for holding human food" or some other variation

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thereof. In contrast, Applicant recites "a human food serving tray assembly", which is a positive recitation of the object itself that is being claimed, namely a human food serving tray assembly. Notwithstanding, Applicant has amended Claims 1 and 11 to recite the human food serving tray in the body of the claim. Claims 1 and 11, therefore, positively call for a human food serving tray assembly that includes a human food serving tray. Applicant respectfully urges that Walker does not disclose or suggest a human food serving tray assembly with a human food serving tray having a bottom wall and a sidewall extending up from the bottom wall to form a cavity, in combination with a preformed flexible paper liner, which is configured and arranged to substantially conform to the inner surfaces of the bottom wall and the sidewall of the tray to form a liquid containing bowl for holding food and liquid, for example. Nor does Walker disclose or suggest the bottom wall forming the support surface of the tray. The Examiner identifies FIG. 4 as disclosing the claimed invention.

Assuming that numeral 44 represents the bottom wall and numeral 42 represents the sidewall, then Walker does not disclose the bottom wall providing a support surface for supporting the tray on a work surface. Walker has a completely different construction than the claimed invention. Further, Walker is directed to a food trough for an animal. Accordingly, Applicant respectfully submits that Claims 1 and 11 and their respective dependent claims, namely Claims 2, 4, 6, 7-10, and 12-17, are patentably distinguishable over Walker alone or in view of any other reference of record.



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Accordingly, Applicant respectfully submits that Claims 1 and 11 and their respective dependent claims, namely Claims 2, 4, 6, 7-10, and 12-17, are patentably distinguishable over Walker alone or in view of any other reference of record.

With respect to Claim 18, Applicant respectfully urges that the Examiner has failed to establish anticipation of the claim. In order to establish anticipation of the claim, each and every limitation of the claim must be found in a single prior art reference. A claim is anticipated if only each and every element as set forth in the claim is found in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Moreover "[t]he identical invention must be shown in as complete detail as contained in the claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 U.S.P.Q.2d 1931, 1920 (Fed. Cir. 1989). All words in a claim must be considered in judging patentability of a claim against prior art. *In re Fine*, 873 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); *In re Wilson*, 424 F.2d 1382, 165 U.S.P.Q. 494 (CCPA 1970).

As noted above, Claim 18 does not recite an intended use—instead it recites a human food serving tray assembly—it recites the thing itself, namely a human food tray assembly. Further, Walker does not disclose or suggest a human food serving tray assembly that includes a plastic tray having a wall forming a generally planar base wall for resting on a support surface and forming a perimeter wall extending around and up from the base wall in combination with a preformed flexible paper base liner. Therefore, Applicant respectfully urges that Walker does not anticipate Claim 18. The Examiner's analysis ignores the claim language. In each of the embodiments disclosed in the Walker reference, the walls that the Examiner likens to or associates with the base wall of the claimed invention, is suspended above the lower most portion

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of the trough as seen in FIGS. 2, 3, 4, 7, and 8. Therefore, Walker's base wall does not rest on a support surface.

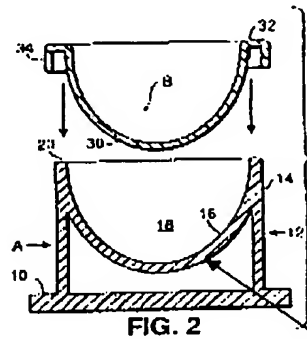


FIG. 2

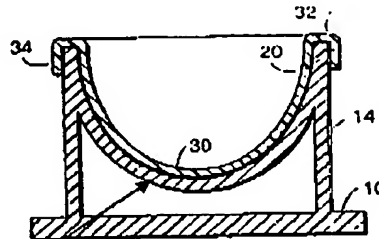


FIG. 3

Base wall

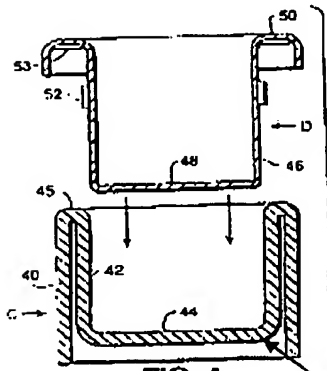


FIG. 4

Base wall

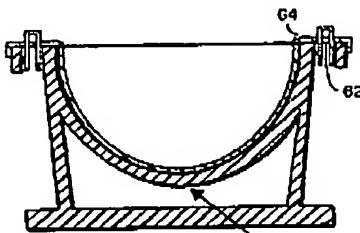


FIG. 7

Base wall

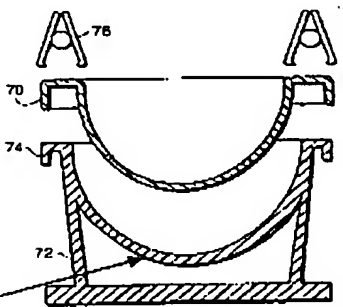


FIG. 8

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Figure 5 merely illustrates a plurality of stacked and nested liners. Therefore, Applicant respectfully urges that the Examiner has failed to establish anticipation of Claim 18 and, further, failed to establish that Claim 18 is not patentable over the prior art.

Therefore, Applicant respectfully submit that Claim 18 and its dependent claims, namely Claims 19 and 21, are patentably distinguishable over Walker alone or in combination with any other reference of record. Further, since the Examiner has failed to establish a prima facie case of anticipation of Claim 18, Applicant respectfully requests that the Examiner reconsider the rejection of Claim 18 and its dependent claims.

AMENDMENT TO THE SPECIFICATION AND DRAWINGS:

In the Advisory Action, the Examiner states that the additional limitations of the claims, as amended in Applicant's Response filed September 15, 2006, present new matter and lack antecedent basis in the specification. Applicant respectfully traverses. Applicant submits that terms such as "upper side" and "lower side," while not previously appearing in the specification, but which do appear in the proposed amendments, are fully supported in the specification and drawings. For example, the terms "upper side" and "lower side" are supported by language such as "inner surface[] of the base wall" (page 2, line 6, and page 4, line 31; or paragraphs [0007] and [0034]) and "bottom surface [of the base wall]" (page 4, line 16; or paragraph [0032]), respectively, and also by the drawings. See MPEP 608.01(a) ("[A]n applicant is not limited to the nomenclature used in the application as filed . . ."). Therefore, the terms used in the claims appearing in Applicant's Response filed September 15, 2006 are fully supported by the specification.

Though not to be construed as an admission that the previously presented claims are not fully supported in the specification, Applicant has amended the specification to

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provide consistency between terminology used in the amended claims and the specification.

An applicant may amend the specification to provide clear antecedent basis in the specification for the terms used in the claims. See MPEP 608.01(o). Accordingly, the paragraph beginning at page 4, line 15 (paragraph {0032}) has been amended as follows:

Referring to FIGS. 6 and 7, bottom or base wall 16 of tray 12 has a lower side 17, which has a generally planar solid support or bottom surface 16a 17a; though it should be understood that tray 12 may have incorporated into bottom surface 16a 17a humps, ridges, or the like, and, further, may be foraminous (formed with a plurality of perforations). Base wall 16 of tray 12 has an upper side 23, which has a generally planar inner or upper surface 23a.

Specifically, the paragraph has been amended to provide separate reference numerals for portions of bottom or base wall 16, including a lower side 17 having a support or bottom surface 17a (formerly numeral 16a, changed herein to numeral 17a to provide consistency with the amended reference numerals), and to specifically refer to an upper side 23 of base wall 16 having an inner or upper surface 23a. The revised language also clarifies that bottom surface 17a may interchangeably be referred to as "support surface" and base wall 16 may interchangeably be referred to as "bottom wall". Figures 6 and 7 have been amended with additional reference numbers corresponding to the amendment of the paragraph, and have been submitted by separate Transmittal of Corrected Formal Drawings, a copy of which is enclosed herewith for the Examiner's reference.

In light of the above amendments and remarks, Applicant respectfully solicits a Notice of Allowance of all claims.

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Should the Examiner have any questions or suggestions, the Examiner is
invited to contact the undersigned at (616) 975-5506 or at collins@vglb.com.

Respectfully submitted,

JIM AZZAR

By: Van Dyke, Gardner, Linn & Burkhardt, LLP

Date: December 28, 2006


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Appl. No. 10/659,862
Amendment Dated December 28, 2006
Reply to Advisory Action of November 29, 2006
Annotated Sheet Showing Changes

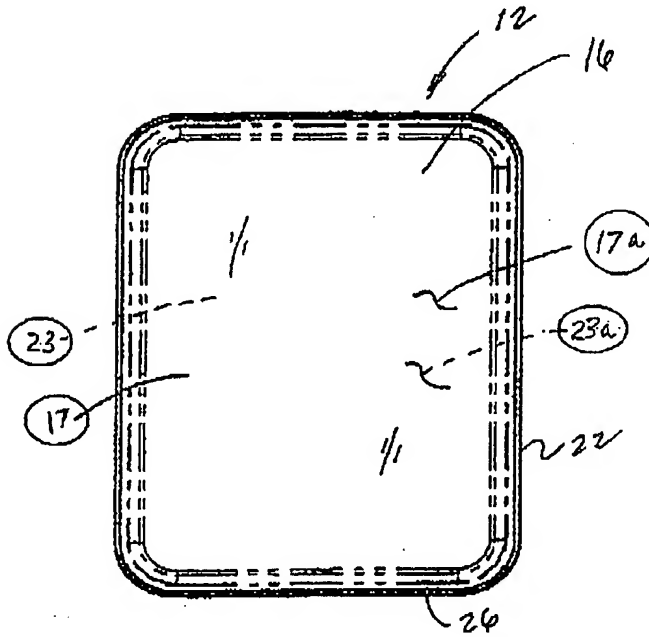


FIG. 6

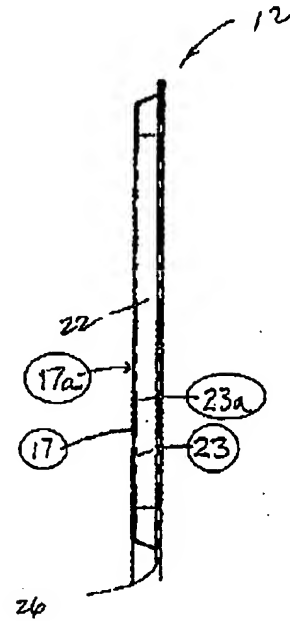


FIG. 7

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